

CONSULTANT SERVICES AGREEMENT

Right of Way Acquisition Services - East/West Water Segment 4

THIS AGREEMENT is made at Fairfield, California, as of July 27, 2017, by and between the City of Fairfield, a municipal corporation (the "CITY") and Associated Right of Way Services, Inc. ("CONSULTANT"), who agree as follows:

1) SERVICES. Subject to the terms and conditions set forth in this Agreement, CONSULTANT shall provide to the CITY the services described in Exhibit "A," which consists of the proposal submitted by CONSULTANT. CONSULTANT shall provide said services at the time, place, and in the manner specified in Exhibit "A."

2) PAYMENT. CITY shall pay CONSULTANT for services rendered pursuant to this Agreement at the times and in the manner set forth in Exhibit "B." The payments specified in Exhibit "B" shall be the only payments to be made to CONSULTANT for services rendered pursuant to this Agreement. CONSULTANT shall submit all billings for said services to the CITY in the manner specified in Exhibit "B."

3) FACILITIES AND EQUIPMENT. CONSULTANT shall, at its sole cost and expense, furnish all facilities and equipment which may be required for furnishing services pursuant to this Agreement.

4) GENERAL PROVISIONS. The general provisions set forth in Exhibit "C" are part of this Agreement. In the event of any inconsistency between said general provisions and any other terms or conditions of this Agreement, the provisions set forth in Exhibit "C" shall control.

5) INSURANCE REQUIREMENTS. The insurance requirements set forth in Exhibit "D" are part of this Agreement. In the event of any inconsistency between said general provisions and any other terms or conditions of this Agreement, the requirements set forth in Exhibit "D" shall control.

6) EXHIBITS. All exhibits referred to herein are attached hereto and are by this reference incorporated herein.

7) TERM. This agreement shall be in effect December 31, 2018; or until the scope of work is completed.

EXECUTED as of the day first above-stated.

City of Fairfield, a municipal corporation

By: 

David A. White
City Manager

WMS

CONSULTANT

By: 

Associated Right of Way Services, Inc.

EXHIBIT "A"

SCOPE OF SERVICE

EXHIBIT A



Scope of Work

SCOPE OF WORK

Associated Right of Way Services, Inc. (AR/WS) will provide right of way project management/consulting, appraisal and acquisition/negotiation services for the City of Fairfield (Client).

Our proposal is based on the following assumptions:

- There are no federal funds being used for this project.
- The property is identified as follows:

APNs	Property Owner	Property Location
0032-042-720 & 0032-042-790	Gimli LTD	Southeast side of Main Street (north of SR 12), Suisun City, CA

RIGHT OF WAY PROJECT MANAGEMENT/CONSULTING

- Establish work process with Client and schedule, manage and coordinate all real estate functions.
- Prepare draft property owner contact letter for review and approval by City.
- Contact property owner to discuss proposed acquisitions.
- Coordinate with Client, appraiser, property acquisition agent and legal counsel, as needed.
- Provide on-going consultation and assistance with analyzing various courses of action.
- Contract management, budget monitoring and control, and project reporting.
- Implementation and compliance with Uniform Act guidelines.
- Monitor work plan and work flow.
- Obtain Preliminary Title Report for the subject property, if requested.

APPRAISAL SERVICES

- Appraisal to be provided as one original with two copies, addressed and delivered to Client staff as directed.
- Appraisal to be prepared in accordance with California Eminent Domain Law; California Government Code Section 7260 et seq.; and the Uniform Standards of Professional Appraisal Practice requirements, except as jurisdictionally exempt.
- The owner or a designated representative will be invited by the appraiser to accompany him/her during the inspection of the property.
- Appraisal to be prepared in an Appraisal Report format in accordance with Uniform Standards of Professional Appraisal Practice, Standard Rule 2-2.
- Appraisal will be completed within approximately 6 – 8 weeks upon receipt of adequate plat maps, legal descriptions and design plans.
- Appraisal is for the “Fair Market Value” of the property as per California Code of Civil Procedure, Section 1263.320.

EXHIBIT A



Scope of Work

- The appraiser will issue the necessary public acquisition informational brochure to all owners.
- The market value of the property taken will not include any increase or decrease in the value of the property that is attributable to any of the following:
 - The project for which the property is taken;
 - The eminent domain proceeding in which the property is taken;
 - Any preliminary actions of the acquiring authority relating to the taking of the property.
- Appraiser will not give consideration to, nor include in their appraisal, any allowance for relocation benefits of personal property.
- If updated values are requested, appraisal services will be billed on an hourly basis in accordance with the AR/WS Fee Schedule. (Optional Service)
- If revisions are made to the property requirements during the appraisal process or upon completion of the report, appraisal time to address these revisions will be billed on an hourly basis in accordance with the AR/WS Fee Schedule. (Optional Service)
- Expert witness related services, including preparation for and appearances at depositions, court, arbitrations/mediations, hearings, and testimony will be billed on an hourly basis in accordance with the AR/WS Fee Schedule. (Optional Service)
- If properties are split or added, additional appraisal reports may be required. (Optional Service)

CLIENT OBLIGATIONS (APPRAISAL)

- Legal descriptions and plat maps.
- Design information and construction plans.
- Current title report.
- Legal opinions as necessary.
- Environmental report.

NEGOTIATIONS / ACQUISITIONS

- AR/WS to prepare acquisition documents. Said documents include, but are not limited to: offer letter, appraisal summary statement and summary of the basis for just compensation, summary statement pertaining to the acquisition of real property or an interest therein, purchase agreement, deed, public acquisition brochure and goodwill information sheet (if not addressed in Client brochure).
- AR/WS will negotiate to acquire partial acquisitions identified by the Client. We are assuming there will be negotiations with up to one property owner.
- All acquisition documents to receive Client's written approval as to form prior to use in the field. If agreement with all owners and other required interests cannot be reached, AR/WS will advise Client that negotiations have reached an impasse. The Client will consider scheduling of an action in eminent domain including the required public necessity hearing. AR/WS will provide condemnation support as needed and requested, budget allowing. AR/WS will initiate and maintain individual acquisition files.

EXHIBIT A



Scope of Work

- If settlement with owner and other required interests is reached pursuant to the Client approved appraisal or Client approved administrative settlement, AR/WS will prepare a Memorandum of Settlement for transmittal to Client. If an administrative settlement appears to be prudent, AR/WS will prepare a settlement discussion memorandum reviewing the issues. This memorandum will require Client written approval before implementation of any settlement agreement.
- AR/WS will establish with Client a process of coordinating escrow closings and reviewing escrow instructions. Where there are escrow closings, preparation of escrow instructions will be completed by title company. Approval of conditions of title and escrow instructions, including but not limited to, "subject to" title exceptions, will be done by Client.
- All discussions for the acquisition of property or an interest therein will be directed to result in the payment of just compensation.
- AR/WS will make every reasonable effort to acquire property on behalf of the Client expeditiously through agreement with its owner and to avoid litigation. This may necessitate greater levels of effort in the negotiations phase and, where appropriate, should continue after eminent domain has been initiated. Client will provide ongoing feedback to AR/WS as to authorization for settlements.

CLIENT OBLIGATIONS (ACQUISITION)

- Written approval of all acquisition documents in a timely manner.
- Direction as to administrative settlements, negotiating authority and condition of title acceptance.
- Providing any formats to be used by AR/WS on Client's behalf.
- Selection of title company.
- Review and approval of title company prepared escrow instructions, including acceptable condition of title.

ADDITIONAL WORK

AR/WS will provide court and/or appeals related services, including, but not limited to: depositions; court appearances; arbitrations/mediations; hearings; testimony; and preparation for such activities, in connection with any service provided to the Client. These services, if requested, are not included in the AR/WS Budget Estimate and would be billed at the applicable current AR/WS hourly rate in accordance with the Fee Schedule.

ADMINISTRATIVE SUPPORT

AR/WS will provide a fully staffed in-house clerical team to provide word processing, reports, project tracking and budget control for all AR/WS services.

EXHIBIT "B"

PAYMENT

1) The total contract price for services rendered by CONSULTANT under this Agreement shall be as specified per the attached.

2) Payment shall be made to CONSULTANT on a time and materials basis, and CONSULTANT shall submit monthly invoices to the Assistant Public Works Director/City Engineer, Julie B. Lucido for the same.

3) Any additional meetings or work required beyond that set forth in Exhibit "A" shall be mutually agreed to in writing by the CITY and CONSULTANT, and shall be billed on a time and materials basis to the Assistant Public Works Director/City Engineer, Julie B. Lucido.

EXHIBIT B



Budget Estimate

Budget Estimate
January 27, 2017

Confidential for CLIENT Use Only

Estimate Valid for 30 Days After Submission

Client:	City of Fairfield		
Project:	East-West Water Transmission Pipeline		
Parcel:	APN	Owner	Property Rights
	0032-042-720 & 0032-042-790	Gimli LTD	Permanent Easement & Temporary Construction Easement

Categories	Scope of Services	Estimated Budget
1. Project Management (Time Charged)	General consultation and coordination as needed. Work plan development and oversight. Prepare draft property owner contact letter. Act as liaison between City and property. Assistance with strategy and analyzing various courses of action. Obtain Preliminary Title Report, if requested.	\$4,000
2. Appraisal (Lump Sum)	Appraisal services for one subject property. Assumes no federal funding involved or independent appraisal review required.	\$6,000
3. Negotiations / Acquisitions (Time Charged)	Assumes negotiations with one property owner.	\$6,000
4. Administrative Support (Time Charged)	Administrative support for all services listed above.	\$500
Estimated Budget Total:		\$16,500

Start

Requirements: Agreement for Professional Services (*signed contract*) – Notice to Proceed.

Ending:

A. Submittal of appraisal report.

B. Negotiations are concluded upon delivery of Memorandum of Settlement to Client or advisory from AR/WS to Client that negotiations have reached an impasse and eminent domain should be considered.

NOTES:

- Figures are based on information provided to AR/WS as of the date of this estimate.
- Assumes CEQA, and if necessary, NEPA compliance has been met.
- Subject to AR/WS Assumptions and Limitations, contained herein.
- The Budget has been prepared based upon an 8-month project duration. An extended or reduced project schedule may increase the estimated budget.
- A contingency is recommended but is not included in the above figures.

EXHIBIT B



Fee Schedule

AR/WS Fee Schedule 2017

CONSULTING CATEGORY	HOURLY RATE
Principal Consultant	\$200.00
Managing Consultant	\$185.00
Consultant I	\$150.00
Consultant II	\$130.00
Consultant III	\$115.00
Right of Way Technician	\$80.00
Administrative Support	\$65.00
Appraisal Reports	Lump Sum
Appraisal Services (Hourly)	\$200.00
Subcontractors	Cost + 10%
Depositions, Court Appearances, Arbitrations / Mediations, Hearings, and Testimony (including preparation)	\$275.00

Fees include direct and indirect expenses and profit

EXHIBIT "C"

GENERAL PROVISIONS

1) INDEPENDENT CONSULTANT. At all times during the term of this Agreement, CONSULTANT shall be an independent contractor and shall not be an employee of CITY. CITY shall have the right to control CONSULTANT only insofar as the results of CONSULTANT's services rendered pursuant to this Agreement; however, CITY shall not have the right to control the means by which CONSULTANT accomplishes services rendered pursuant to this Agreement.

2) LICENSES; PERMITS; ETC. CONSULTANT represents and warrants to CITY that CONSULTANT has all licenses, permits, qualifications, and approvals of whatsoever nature which are legally required for CONSULTANT to practice CONSULTANT's profession. CONSULTANT represents and warrants to CITY that CONSULTANT shall, at its sole cost and expense, keep in effect at all times during the term of this Agreement, any licenses, permits, and approvals which are legally required for CONSULTANT to practice his profession.

3) TIME. CONSULTANT shall devote such services pursuant to this Agreement as may be reasonably necessary for satisfactory performance of CONSULTANT's obligations pursuant to this Agreement. CONSULTANT shall adhere to the Schedule of Activities as described in their Executive Summary.

4) CONSULTANT NOT AN AGENT. Except as CITY may specify in writing, CONSULTANT shall have no authority, express or implied, to act on behalf of CITY in any capacity whatsoever as an agent. CONSULTANT shall have no authority, express or implied, pursuant to this Agreement, to bind CITY to any obligation whatsoever.

5) ASSIGNMENT PROHIBITED. No party to this Agreement may assign any right or obligation pursuant to this Agreement. Any attempted or purported assignment of any right or obligation pursuant to this Agreement shall be void and of no effect.

6) PERSONNEL. CONSULTANT shall assign only competent personnel to perform services pursuant to this Agreement. In the event that CITY, in its sole discretion, at anytime during the term of this Agreement, desires the removal of any person or persons assigned by CONSULTANT to perform services pursuant to this Agreement, CONSULTANT shall remove any such person immediately upon receiving notice from CITY of the desire of CITY for the removal of such person or persons.

7) STANDARD OF PERFORMANCE. CONSULTANT shall perform all services required pursuant to this Agreement. Services shall be performed in the manner and according to the standards observed by a competent practitioner of the profession in which CONSULTANT is engaged in the geographical area in which CONSULTANT practices his profession. All products which CONSULTANT delivers to CITY pursuant to this Agreement shall be prepared in a workmanlike manner, and conform to the standards of quality normally observed by a person practicing in CONSULTANT's profession. CITY shall be the sole judge as to whether the product of the CONSULTANT is satisfactory.

8) CANCELLATION OF AGREEMENT. This Agreement may be canceled at any time by the CITY at its discretion upon written notification to CONSULTANT. CONSULTANT is entitled to receive full payment for all services performed and all costs incurred up to and including the date of receipt of written notice to cease work on the project. CONSULTANT shall be entitled to no further compensation for work performed after the date of receipt of written notice to cease work. All completed and incomplete products up to the date of receipt of written notice to cease work shall become the property of CITY.

9) PRODUCTS OF CONSULTING. All products of the CONSULTANT provided under this Agreement shall be the property of the CITY.

10) INDEMNIFY AND HOLD HARMLESS.

a) If AGREEMENT is an agreement for design professional services subject to California Civil Code § 2782.8(a) and CONSULTANT is a design professional, as defined in California Civil Code § 2782.8(c)(2), to the fullest extent allowed by law, CONSULTANT shall hold harmless, defend and indemnify the CITY, its officers, agents, employees, and volunteers from and against all claims, damages, losses, and expenses including attorneys' fees arising out of, or pertaining to, or relating to the negligence, recklessness, or willful misconduct of the CONSULTANT, except where caused by the active negligence, sole negligence, or willful misconduct of the CITY.

b) If AGREEMENT is not an agreement for design professional services subject to California Civil Code § 2782.8(a) or CONSULTANT is not a design professional as defined in subsection (a) above, to the fullest extent allowed by law, CONSULTANT shall indemnify, defend, and hold harmless the CITY, its officers, agents, employees and volunteers from all claims, suits, or actions of every name, kind and description, brought forth on account of injuries to or death of any person or damage to property arising from or connected with the willful misconduct, negligent acts, errors or omissions, ultra-hazardous activities, activities giving rise to strict liability, or defects in design by CONSULTANT or any person directly or indirectly employed by or acting as agent for CONSULTANT in the performance of this Agreement, including the concurrent or successive passive negligence of the CITY, its officers, agents, employees or volunteers.

It is understood that the duty of CONSULTANT to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code.

Acceptance of insurance certificates and endorsements required under this Agreement does not relieve CONSULTANT from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply whether or not such insurance policies are determined to be applicable to any such damages or claims for damages.

CONSULTANT'S responsibility for such defense and indemnity shall survive termination or completion of this agreement for the full period of time allowed by law.

11) PROHIBITED INTERESTS. No employee of the CITY shall have any direct financial interest in this agreement. This agreement shall be voidable at the option of the CITY if this provision is violated.

12)LOCAL EMPLOYMENT POLICY. The CITY desires wherever possible, to hire qualified local residents to work on city projects. Local resident is defined as a person who resides in Solano County. The CITY encourages an active affirmative action program on the part of its contractors, consultants, and developers. When local projects require, subcontractors, contractors, consultants and developers will solicit proposals from qualified local firms where possible.

As a way of responding to the provisions of the Davis-Bacon Act and this program, contractor, consultants, and developers will be asked, to provide no more frequently than monthly, a report which lists the employee's name, job class, hours worked, salary paid, city of residence, and ethnic origin.

13)CONSULTANT NOT A PUBLIC OFFICIAL. CONSULTANT is not a "public official" for purposes of Government Code §§ 87200 et seq. CONSULTANT conducts research and arrives at his or her conclusions, advice, recommendation, or counsel independent of the control and direction of the CITY or any CITY official, other than normal contract monitoring. In addition, CONSULTANT possesses no authority with respect to any CITY decision beyond these conclusions, advice, recommendation, or counsel.

14)EMPLOYMENT DEVELOPMENT DEPARTMENT REPORTING REQUIREMENTS. When the CITY executes an agreement for or makes payment to CONSULTANT in the amount of \$600 (six hundred dollars) or more in any one calendar year, CONSULTANT shall provide the following information to CITY to comply with Employment Development Department (EDD) reporting requirements:

a) Whether CONSULTANT is doing business as a sole proprietorship, partnership, limited liability partnership, corporation, limited liability corporation, non-profit corporation or other form of organization.

b) If CONSULTANT is doing business as a sole proprietorship, CONSULTANT shall provide the full name, address and social security number or federal tax identification number of the sole proprietor.

c) If CONSULTANT is doing business as other than a sole proprietorship, CONSULTANT shall provide CONSULTANT'S federal tax identification number.

EXHIBIT "D"

INSURANCE REQUIREMENTS

CONSULTANT shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the CONSULTANT, its agents, representatives, or employees.

1) MINIMUM SCOPE AND LIMITS OF INSURANCE

a) Commercial General Liability coverage (occurrence Form CG 00 01) with minimum limits of \$1,000,000 per occurrence for bodily injury, personal injury, products and completed operations, and property damage. If Commercial General Liability or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

b) Automobile Liability coverage (Form CA 00 01 with Code 1 – any auto) with minimum limits of \$1,000,000 per accident for bodily injury and property damage.

c) Workers' Compensation insurance as required by the State of California and Employers' Liability insurance, each in the amount of \$1,000,000 per accident for bodily injury or disease.

2) INDUSTRY SPECIFIC COVERAGES

If checked below, the following insurance is also required.

☐ Professional Liability Insurance / Errors and Omissions Liability in the minimum amount of \$1,000,000 per occurrence.

☐ Pollution Liability Insurance in the minimum amount of \$1,000,000 per occurrence

☐ Garage Keepers Insurance in the minimum amount of \$1,000,000 per occurrence

☐ Fidelity / Crime / Dishonesty Bond in the minimum amount of \$ _____

☐ MCS-90 Endorsement to Business Automobile insurance for transportation of hazardous materials and pollutants

☐ Builder's Risk / Course of Construction Insurance in the minimum amount of \$ _____.

3) INSURANCE PROVISIONS

a) DEDUCTIBLES AND SELF-INSURED RETENTIONS. Any deductibles or self-insured retentions must be declared to and approved by the CITY. At the option of the CITY, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the CITY, its officers, officials, employees and volunteers; or the CONSULTANT shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

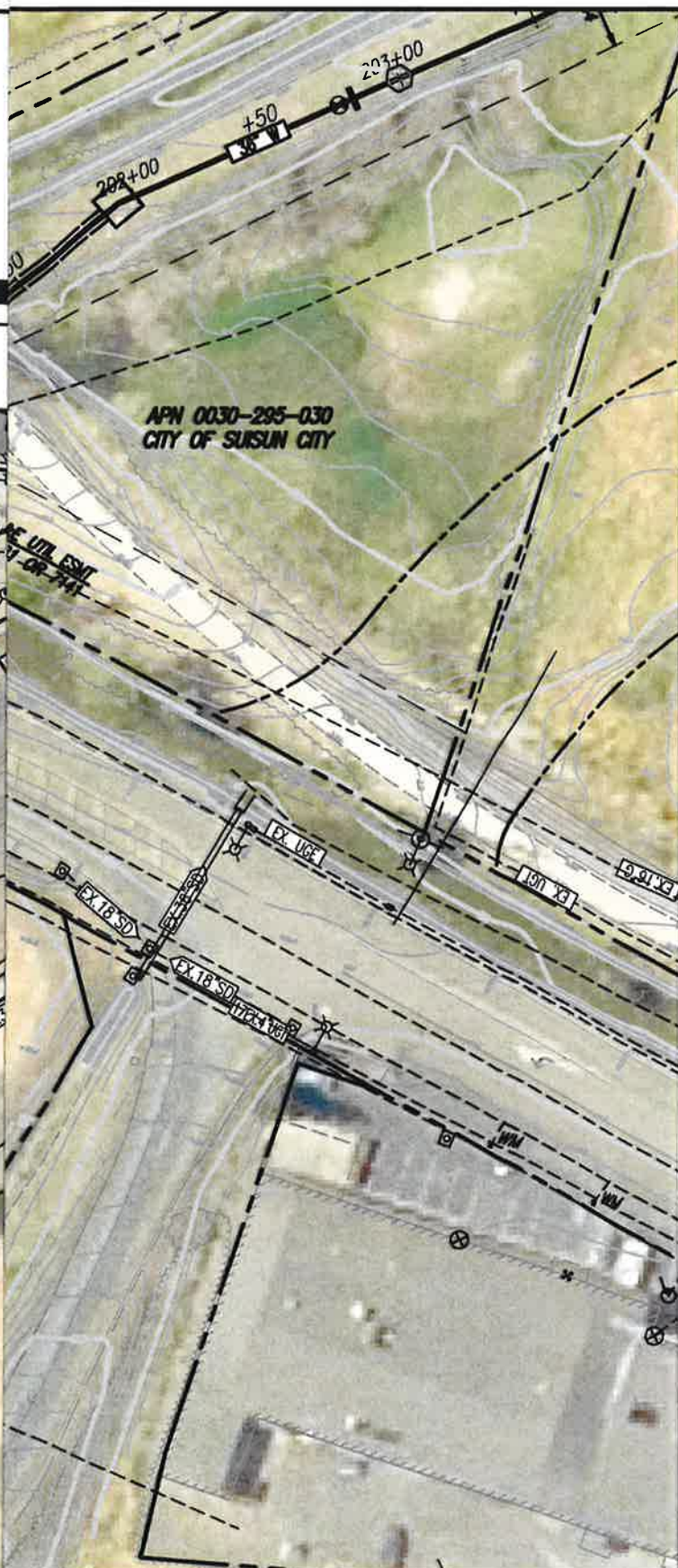
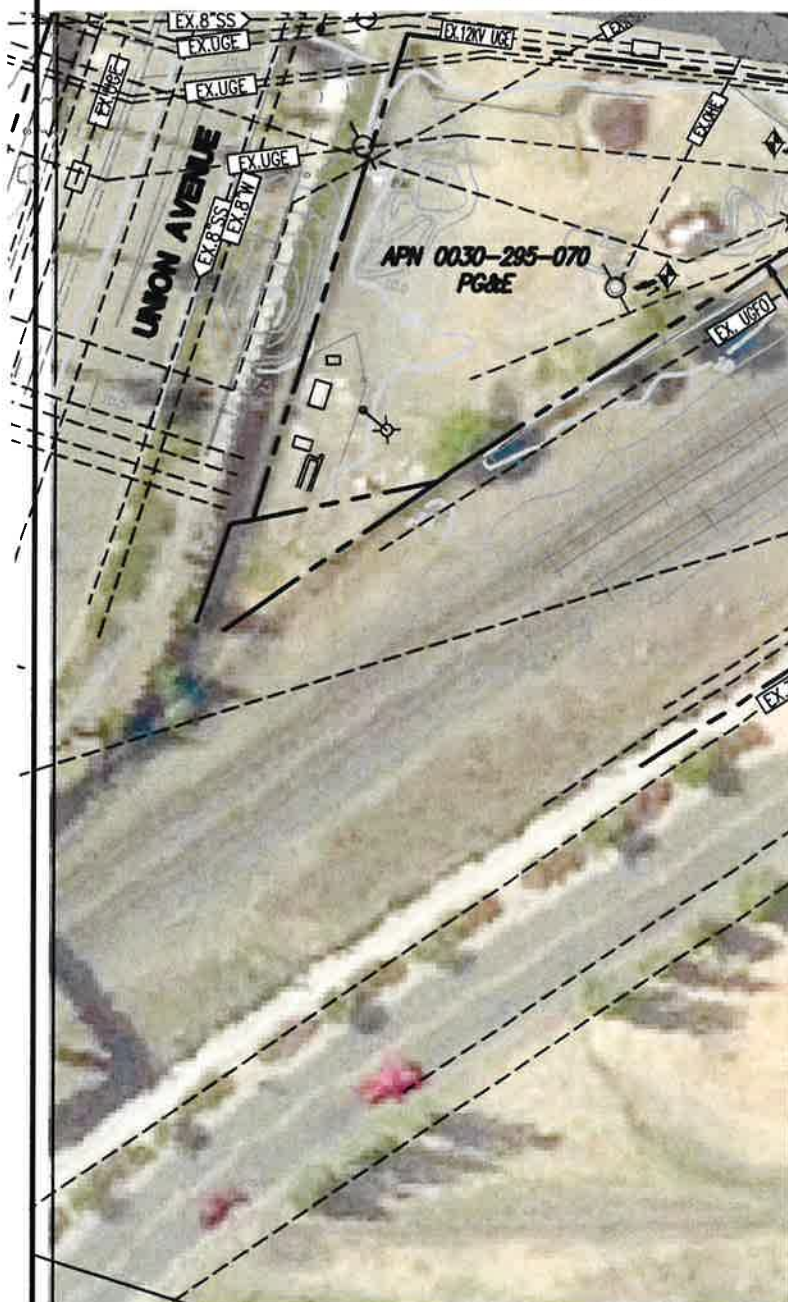
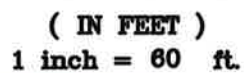
b) The general and automobile liability policies (and if applicable, pollution liability, garage keepers liability and builder's risk policies) are to contain, or be endorsed to contain, the following provisions:

- i) The CITY, its officers, officials, employees and volunteers are to be covered as insureds as respects: liability arising out of work or operations performed by or on behalf of the CONSULTANT; products and completed operations of the CONSULTANT; premises owned, occupied or used by the CONSULTANT; and automobiles owned, leased, hired or borrowed by the CONSULTANT. The coverage shall contain no special limitations on the scope of protection afforded to the CITY, its officers, officials, employees or volunteers.
- ii) For any claims related to this project, the CONSULTANT'S insurance coverage shall be primary insurance as respects the CITY, its officers, officials, employees and volunteers. Any insurance or self-insured maintained by the CITY, its officers, officials, employees or volunteers shall be excess of the CONSULTANT'S insurance and shall not contribute with it.
- iii) Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the CITY, its officers, officials, employees or volunteers.
- iv) The CONSULTANT'S insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- v) Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the CITY.
- vi) The policy limits of coverage shall be made available to the full limits of the policy. The minimum limits stated above shall not serve to reduce the CONSULTANT'S policy limits of coverage. Therefore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this agreement, or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured, whichever is greater.

c) ACCEPTABILITY OF INSURER. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the CITY.

d) VERIFICATION OF COVERAGE. CONSULTANT shall furnish the CITY with original endorsements effecting coverage required by this Exhibit D. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. The endorsements are to be on forms provided by the CITY or on forms equivalent to CG 20 10 11 85 subject to CITY approval. All insurance certificates and endorsements are to be received and approved by the CITY before work commences. At the request of the CITY, CONSULTANT shall provide complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications.

e) SUB-CONTRACTORS. CONSULTANT shall require all subcontractors to procure and maintain insurance policies subject to the requirements of Exhibit D. Failure of CONSULTANT to verify existence of sub-contractor's insurance shall not relieve CONSULTANT from any claim arising from sub-contractors work on behalf of CONSULTANT.



Creegan+D'Angelo
INFRASTRUCTURE
ENGINEERS

2420 Martin Road, Suite
Fairfield, CA 94534
Tel (707) 429-5300
Fax (707) 429-2086

www.cdengineers.com

EXHIBIT

2/1/17

SHEET 1 OF 1